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**From:** MILLER Todd [tmiller@springfield-or.gov]  
**Sent:** 8/15/2019 9:59:03 PM  
**To:** 'BOROK Aron' [Aron.BOROK@state.or.us]; Alex Liverman [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=userb7cefcf7]; Chandra Ferrari [Chandra.Ferrari@tu.org]; DOU Connie [Connie.Dou@state.or.us]; STURDEVANT Debra [Debra.STURDEVANT@state.or.us]; Donna Schmitz [dschmitz@bentonswcd.org]; BRANDSTETTER Erich [Erich.Brandstetter@state.or.us]; Guzzo, Lindsay [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8643d3d6703a4886b13c5548d22307a0-Guzzo, Lindsay]; Jeff Stone [jstone@oan.org]; VAN NATTA Kathryn [kathryn@nwpulpanpaper.org]; Labiosa, Rochelle [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ded3654216c9461d95cd5a3ceec507ef-Labiosa, Rochelle]; Allison Laplante [laplante@lclark.edu]; mercury2019 [mercury2019@deq.state.or.us]; Michael.karnosh@grandronde.org [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6cdc8fcc0ca249f78393546ee03b1151-Michael.karnosh@grandronde.org]; Sharla Moffett [SharlaMoffett@oregonbusinessindustry.com]; Taylor Lucey [taylor@ofic.com]  
**CC:** Rajeev Kapur [KapurR@CleanWaterServices.org]; Susie Smith - Oregon Association of Clean Water Agencies (ACWA) [smith@oracwa.org] [smith@oracwa.org]  
**Subject:** RE: Meeting summary and rationale for rule comments not resulting in revisions  
**Attachments:** ACWA comments on the Mercury MDV\_15Aug2019.docx

Aron and all:

Thank you for the opportunity to participate on the advisory committee and to provide a final round of comments. I think you are requesting comments back on the meeting notes specifically. Other than a typo, I do not have any comments there. However, I do want to submit the following comments (below and attached) for DEQ's consideration. These comments address several issues noted in the rule update and meeting notes that are of particular importance to ACWA.

Regards,  
Todd

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**Todd A. Miller** | Environmental Management Analyst | *Environmental Services Division – Policy Support & Planning Section*

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Contact me if you need an alternative email format

ACWA comments on the Draft Mercury MDV  
Mercury MDV advisory committee  
August 15, 2019  
Prepared by Todd Miller, City of Springfield

Reference document: *DRAFT Multiple Discharger Variance for Mercury in the Willamette Basin*, September 2019 (DEQ), as presented for the August 1, 2019 meeting of the Mercury MDV advisory committee.

As an advisory committee member, ACWA has the following comments on the draft Mercury MDV, related to the following sections as noted.

**Section 3.1.2.**

Section 3 presents the variance requirements including that of the Highest Attainable Condition (HAC) – presented under Section 3.1. The MDV identifies a HAC based on “no additional feasible pollutant control technology can be identified.” To support that, one of the conclusions DEQ cites under Section 3.1.2 is “Facilities without advanced

treatment – MMP implementation will result in effluent concentrations similar to that of advanced treatment with less environmental harm.” DEQ references Wisconsin studies that support that finding.

ACWA believes DEQ should make it clear that not all MMPs may result in significant reductions in mercury concentrations. This may be particularly true in Oregon in 2019, as the dental amalgam rule has previously gone into effect and significant reductions in influent and biosolids mercury concentrations were recorded. Starting from that benchmark, it is not clear how much reduction can be achieved via MMP implementation.

During the advisory committee meetings, DEQ staff stated that the MDV would implement the MMP approach with 5-year evaluations for trends in mercury reductions; therefore, if significant mercury reductions are not being achieved, alternative considerations for reductions would be made then. ACWA is concerned that wastewater utilities could be caught off guard if MMP implementation is not as successful in mercury reductions as needed, and may be required to implement additional treatment measures to reduce mercury without having made the proper planning considerations.

ACWA acknowledges that Section 3.1.2 goes on to state “Environmental costs associated with advanced treatment include greater energy consumption, added greenhouse gas emissions, and the need for additional waste disposal.” ACWA concurs with the potential net environmental harm of advanced treatment solely for mercury reduction. ACWA further concurs that MMPs can help reduce mercury concentrations in lieu of advanced treatment. However, ACWA is concerned that equating MMP concentration reductions with that of advanced treatment could be misleading. A recent study in California recommends doing away with MMP requirements as ineffective for facilities employing advanced treatment.

ACWA recommends that the Section 3.1.2 statement be revised to read “Facilities without advanced treatment – MMP implementation may result in reductions in effluent concentrations without employing advanced treatment; implementation of advanced treatment solely for mercury reduction may produce net environmental harm.”

### **Section 3.2.2**

Section 3.2.2 addresses “Adoption and Implementation of a Mercury Minimization Plan.” DEQ references its outdated 2010 Internal Management Directive: Implementation of Methylmercury Criterion in NPDES Permits (IMD) for a description of implementing MMPs tailored for each facility. The IMD largely references dental offices and hospital facilities for reduction, and a long list of mercury-containing goods that may still be in use in the community, but do not directly impact wastewater, as targets for community-wide collection.

DEQ further notes over two decades of nationwide MMP implementation from which to draw knowledge. DEQ included language in the draft rule highlighting expected types of activities as follows:

*340-041-0059 (6)(e)((B)(2)(A) For municipal facilities, mercury reduction activities should address potential mercury sources from dental offices, medical facilities, schools, and other laboratories, as well as identify potential sources of mercury in the service area.*

For the most part, these MMP measures appear to have been already largely implemented or require considerable outreach investment for little return. ACWA strongly recommends that the DEQ include development of an updated MMP template as part of its MDV strategy.

Additionally, ACWA urges DEQ to further the opportunities for water quality trading for mercury reduction as allowed under a variance. Since the Mercury TMDL identifies nonpoint sources from sediment transport as contributing the majority of mercury input into the Willamette system (modeling indicates that the source categories of surface runoff and sediment erosion together contribute approximately 76 percent of the total mercury load to basin streams), greater environmental benefit is likely attained by supporting conservation and restoration organizations to improve river function and health, especially along forest and agricultural lands.

### **Section 4.1**

Section 4.1 relates to the Application Process for Coverage Under the MDV; part of the process requires submittal of the last 5 years of (assumed quarterly) mercury effluent data, with a minimum of 2 years of data if sampling has been conducted for less than 5 years.

ACWA notes that monitoring for mercury will be new for many permittees and in order for the appropriate lead time for data collection prior to permit renewal, permittees should be given clear and adequate advance notice of their permit renewal timeframe. ACWA requests that DEQ ensure that its permit issuance plan (PIP) process, including a 5-year PIP, is recognized in this regard and raised in importance and emphasis for timely updates.

#### **Section 4.2.4**

Section 4.2.4 addresses Annual Progress Report requirements. The section states minimum information should include both MMP activities conducted and any nonpoint source best management practices implemented *under the authority* of the permittee. (emphasis added).

While ACWA recognizes and supports the use of BMPs to reduce nonpoint sources of mercury, this monitoring requirement appears out of place. Either such actions should be included as part of an NPDES permittee's MMP (or potentially through a water quality trading program), or the BMPs will have been conducted outside of the NPDES permittee under separate authority or objectives of the permitted agency.

ACWA recommends removing nonpoint source BMPs from the reporting requirements.

-----Original Message-----

From: BOROK Aron [mailto:Aron.BOROK@state.or.us]

Sent: Thursday, August 08, 2019 12:04 PM

To: LIVERMAN Alex; Chandra Ferrari; DOU Connie; STURDEVANT Debra; Donna Schmitz; BRANDSTETTER Erich; Lindsay Guzzo; Jeff Stone; VAN NATTA Kathryn; Labiosa, Rochelle; Allison Laplante; mercury2019; Michael Karnosh; Sharla Moffett; Taylor Lucey; MILLER Todd

Subject: Meeting summary and rationale for rule comments not resulting in revisions

Willamette Basin Mercury MDV Advisory Committee:

Attached please find two documents:

1. Meeting summary for last week's Advisory Committee meeting. Please review and send any comments by next Thursday. I will address any comments and post the meeting summary to the Advisory Committee web page.
2. Per your request, a document providing our rationale for comments we received from advisory committee members on rule language and which did not result in rule revisions. Comments provided by advisory committee members on variance rules and the fiscal impact statement are available on the Advisory Committee web page under meeting number 5 - supplementary meeting materials<<https://www.oregon.gov/deq/Rulemaking%20Docs/mercury2019M5Supplement.pdf>>.

Again, I'd like to thank everyone for their participation in this process and contribution to the MDV. We appreciate your patience as we figured out the details.

Please let me know if you have any questions or concerns.

Sincerely,

Aron Borok